

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARYL DUDE NELSON,

Petitioner,

v.

Civil No. 2:16-CV-12260

HONORABLE DENISE PAGE HOOD

CHIEF UNITED STATES DISTRICT JUDGE

SHANE JACKSON,

Respondent,

_____ /

**OPINION AND ORDER DENYING THE MOTION FOR
RECONSIDERATION AND DIRECTING THE CLERK OF THE COURT TO
TRANSFER THE MOTION FOR A CERTIFICATE OF APPEALABILITY
[Dkt. # 21] TO THE UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT**

Daryl Dude Nelson, (“Petitioner”), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction for second-degree murder, M.C.L.A. 750.317; reckless driving causing death, M.C.L.A. 257.626(4) and being a third felony habitual offender, M.C.L.A. 769.11. This Court denied the petition for writ of habeas corpus, declined to issue a certificate of appealability, and granted petitioner leave to appeal *in forma pauperis*. *Nelson v. Jackson*, No. 2:16-CV-12260, 2016 WL 6441287 (E.D. Mich. Oct. 31, 2016).

Petitioner has filed a notice of appeal. Petitioner has also filed a

motion for a certificate of appealability, which this Court will treat in part as a motion for reconsideration of the Court's previous decision to deny petitioner a certificate of appealability.

For the reasons that follow, the Court will deny petitioner's motion for reconsideration. The Court will further order that petitioner's motion for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit.

The Court will deny plaintiff's motion for reconsideration. U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Ford Motor Co. v. Greatdomains.com, Inc.*, 177 F. Supp. 2d 628, 632 (E.D. Mich. 2001). A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and show that correcting the defect will lead to a different disposition of the case. See *DirecTV, Inc. v. Karpinsky*, 274 F. Supp. 2d 918, 921 (E.D. Mich. 2003). Because this Court previously denied petitioner a certificate of appealability when it denied the petition for writ of habeas corpus, the Court

will construe petitioner's motion for a certificate of appealability as a motion for reconsideration of the Court's prior order to deny a certificate of appealability. See *e.g. Jackson v. Crosby*, 437 F. 3d 1290, 1294, n. 5 (11th Cir. 2006).

Petitioner's motion for reconsideration will be denied, because petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied petitioner's habeas application and declined to issue a certificate of appealability. See *Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

This Court notes that the proper procedure when a district court denies a certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for writ of habeas corpus or the motion to vacate sentence. See *Sims v. U.S.*, 244 F. 3d 509 (6th Cir. 2001)(citing Fed. R.App. P. 22(b)(1)). In light of the fact that this Court has already denied petitioner a certificate of appealability, petitioner should direct his request for a certificate of appealability to the Sixth Circuit. The Court, in the interests of justice, will order that petitioner's motion for a certificate of

appealability to be transferred to the United States Court of Appeals for the Sixth Circuit.

IT IS HEREBY ORDERED that petitioner's motion for a reconsideration is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of the Court transfer petitioner's "Motion for Certificate of Appealability" [Dkt. # 21] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

s/Denise Page Hood

HON. DENISE PAGE HOOD

CHIEF UNITED STATES DISTRICT JUDGE

Dated: December 29, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 29, 2016, by electronic and/or ordinary mail.

s/Teresa McGovern

Case Manager Generalist